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FM AMEMBASSY THE HAGUE  
TO RUEHC/SECSTATE WASHDC IMMEDIATE 5655  
INFO RUEAIIA/CIA WASHDC PRIORITY  
RUCPDO/DEPT OF COMMERCE WASHDC PRIORITY  
RHEBAAA/DEPT OF ENERGY WASHDC PRIORITY  
RUEKJCS/SECDEF WASHDC PRIORITY  
RHEHNSC/NSC WASHDC PRIORITY  
RUEKJCS/JOINT STAFF WASHDC PRIORITY

UNCLAS THE HAGUE 001041

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STATE FOR ISN/CB, VCI/CCB, L/ACV, IO/S  
SECDEF FOR OSD/ISP  
JOINT STAFF FOR DD PMA-A FOR WTC  
COMMERCE FOR BIS (GOLDMAN)  
NSC FOR DICASAGRANDE  
WINPAC FOR WALTER

E.O. 12958: N/A  
TAGS: [PARM](#) [PREL](#) [CWC](#)  
SUBJECT: CHEMICAL WEAPONS CONVENTION (CWC): WRAP-UP FOR  
WEEK ENDING MAY 5

This is CWC-41-06.

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CHINA  
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¶1. (U) PRC Ambassador Xue Hanqin asked to meet with Amb. Javits on April 28 to discuss a number of issues. Xue raised the PRC request on the margins of last year's Conference of States Parties for bilateral discussions concerning issues ranging from destruction of abandoned CW to chemical industry issues. She said that the PRC is still coordinating a response to the U.S. questions on the ACW issue. Xue noted that in addition to the various ministries in Beijing, there are 13 local authorities that need to be contacted for information. She also made the point that the Chinese are very focused on the issue of dealing with Iran's nuclear program, and this was drawing attention away from other issues

¶2. (U) Xue said that the Japan/PRC request for an extension of ACW destruction will not be on the agenda of the May Executive Council. However, Zhang Shen, who accompanied Xue, said that the document would be available by the May 15 destruction informals so it could be the basis for discussion on that topic that day. On the discussions with Japan, Xue simply reiterated that there is still no general agreement with Japan on a destruction program or on specific issues such as destroying ACW on-site or transporting to a central facility.

¶3. (U) In an aside about the U.S. extension request, Xue commented on the fact that delegations are going to link destruction issues and implementation issues. Xue also spent a great deal of time expressing her concern about the Technical Secretariat agreement with the African Union, and emphasizing that in her view this set a bad precedent. She stressed that the authority to conclude agreements is with the EC, not the TS, and it is important that the Director General make a clear statement about this at the next EC. (Amb. Javits has already discussed this with the DG and is helping to craft some appropriate language.)

¶4. (U) On the 10th anniversary of entry into force of the CWC, Xue said that Director for Special Projects Krzysztof

Paturej had raised the issue of PRC attendance and asked for Ministerial-level attendance. Xue emphasized that it would be important to coordinate on the level of attendance, especially within the P-5.

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ARTICLE VII  
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15. (U) Facilitator Maarten Lak (Netherlands) held a May 2 consultation on Article VII, supported by Legal Advisor Onate and Implementation Support Branch (IPB) personnel. Discussion centered on two topics: the advance copy of the Article VII status report and IPB/Onate's discussions of the results of recent Technical Assistance Visits. First, Belgium inquired whether the status report could be used to set TS implementation priorities using such factors as date of EIF, whether or not post-conflict, etc. IPB chief Magda Bauta said yes, but only if delegations first achieve consensus on indicators to use before providing suggestions to the TS.

16. (U) Ireland asked whether in the specific case of post-conflict states, whether the TS could capitalize on internal legal capacity-building elements in country. The TS responded that no, it had not, but this might be a useful venue to further implementation. Finally, New Zealand, Colombia and the U.S. noted that a number of lines in the table provided (faxed back to ISN/CB) noted only that a fax was received on a specific date, but no details of the information provided appeared. Onate noted that the table was a synopsis of a larger document, which is available on the external server, and is continually updated (note: it should be checked frequently). Lak stated that he would provide draft EC report language at the next consultation on

11 May.

17. (U) TAV results: (Note: Interestingly, although many of the TAVs discussed were joint U.S./TS efforts, U.S. involvement was mentioned only in the instances of the Philippines TAV and the Indonesian information exchange.) First, Onate discussed the visit to St. Kitts and Nevis, where 11 States Party (and one non-SP, the Bahamas) attended a workshop sponsored by the Organization of Eastern Caribbean States. Three members of the Office of Legal Affairs (OLA) and two members of IPB attended to assist in drafting implementing legislation. First, Belize has submitted its legislation to its Cabinet and established its NA in the Ministry of Defense. Three general approaches were taken: the single act approach is being taken by Antigua (which anticipates submitting its draft to the Cabinet in two weeks), the Bahamas (which is expected to adhere shortly; its NA will be in its MFA) and St. Kitts. An act integrating implementation legislation for the CWC and other Conventions (such as Rotterdam and Stockholm) is being taken by Dominica (which expects to submit it to Parliament in late 2006) and St. Lucia. Guyana and Trinidad prepared drafts for both approaches and requested comments from the TS. Haiti prepared draft legislation for imposing penalties and established its NA in its Pharmaceutical Control Board. Much progress is expected in the next few months.

18. (U) Onate reported that he spent April 10-12 in Argentina where, just prior to his visit, the implementing legislation was submitted to parliament. He then was in Lima, Peru, with the Andean Community members April 24-25. Four of the five states are in good shape. Bolivia established its NA in the Ministry of Defense and had draft implementing legislation of surprisingly good quality. Passage is expected in the next three or four months. Peru modeled its legislation on that of the UK, incorporating its private sector into its NA. Its draft implementing legislation is finalized. The remaining unresolved issue is privileges and immunities: by law Peru can only issue visas for one year, not the required two.

19. (U) Colombia anticipates its implementing draft legislation will be ready for its legislature in May 2006,

after elections. Venezuela also was a happy surprise, with an established NA, initial declaration, and already two industry inspections. The Ministries of Justice and Foreign Affairs are finalizing the draft legislation. All that remains is the approval of the petroleum industry. Sadly, Ecuador has made little progress. It has an established NA, which has no budget and no people. Its personnel turned over four times this past year, which has impeded progress. Ecuador formally asked for TS assistance.

¶10. (U) Anand Dhavle (IPB) discussed his February 13-15 TAV to Tanzania. Just a year ago, its embassy in Brussels became energized on the CWC front, which resulted in attendance at a May 2005 TS meeting in Namibia. As a result of the TAV, Tanzania has draft legislation on which OLA is commenting. The newly established NA set out its action plan for completing its implementation process. It also will be hosting the 4th regional meeting of the National Authorities of the Africa Group. One remaining issue is about to be resolved: The ambassador in Brussels needs to be accredited to the OPCW.

¶11. (U) Separately, del reps were advised the GRULAC was fighting the U.S. initiative to put the highest priority on TAVs for implementation support. In response, del rep had coffee with the Colombian del rep just prior to the Article VII consultation, to assure him that the U.S. request was not an "either/or;" rather the U.S. is asking was asking for additional TAVS. The U.S. values the role played by meetings of the regional and sub-regional NAs, where TS exchanges with the one or two attendees from capital are viewed as a useful mechanism to obtain progress reports on a states' implementation effort. However, these meetings are not/not the way to forward implementation. TAVs to capitals result in meetings of all relevant agencies, where all attendees learn of their roles in their NA, and appropriate legislation can be drafted. The Colombian del rep was grateful for the

explanation, acknowledged that the GRULAC had been misinformed, and promised to explain the U.S. approach to other GRULAC members.

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INDUSTRY/LATE SUBMISSION OF DECLARATIONS  
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¶12. (U) Facilitator Larry Denyer (U.S.) presided over his first consultation on this topic. TS officials presented an informal paper describing the issue along with the TS Note S/567/2006 dated 25 April 2006, and a series of graphs on timeliness of annual declarations (faxed back to ISN/CB). In general, timeliness of declarations has improved, but there still much work to be done. Italy asked if the TS had ever studied reasons behind the delay, and received a negative reply along with speculation that potential causes were delays related to the submission of classified materials and lack of National Authority capacity, resulting in delays in compilation and transmission of declarations.

¶13. (U) Italy, supported by Australia, China, India, Japan, and The Netherlands, requested the TS study the situation and present its conclusions to delegations. India also asked whether the majority of the delays were insignificant, e.g., one or two days due to transmission issues, or whether significant delays were the case, such as one or two months. Italy also requested the TS to provide an annual report on delays and the underlying causes. Australia asked for a list of states that had not met the deadlines and the date on which their declarations were received, as well as a list of those states that submitted nothing at all.

¶14. (U) The UK noted that the CWC sets out clear deadlines and wondered if use of the new Verification Information System (VIS) might mitigate against some of the delays. (The response was: no, still classified). Germany, supported by Japan, asked whether the delays resulted in significant unfairness, i.e., more industry inspections for those who submit on time versus those states that delayed. If so,

Germany recommended consideration of appropriate admonishments for states that do not comply.

¶15. (U) With respect to working on a nil declaration, delegations agreed that this would address one aspect of the problem. Iran raised concerns regarding potential legal implications. Article III specified where nil declarations were required (presence/absence CW stockpiles), but Article VI purposely avoided such language. While this would not prevent negotiation of such a declaration, delegations must carefully consider possible formats and whether it would be included in the Declarations Handbook. Would failure to submit a nil declaration be a case of noncompliance? The facilitator noted that the issue of legality had been raised with the Legal Advisor, who had no objections. Several states worried that submission of an annual nil declaration would burden small NAs with yet another reporting requirement. Switzerland, supported by the UK, demurred, saying that the difficult part is reaching out to industry, not filling in and submitting a short form.

¶16. (U) Overall, the first meeting was successful, with twenty-six delegations in attendance. Given the early state of play, there was quite a bit of interest and discussion during the meeting. Facilitator will meet with the TS the week of May 7 to discuss next steps.

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INDUSTRY/OCPF SITE SELECTION  
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¶17. (U) Facilitator Luis Garcia (Spain) held a May 4 consultation on the issue of OCPF Site Selection Methodology. Garcia's intent was to present corrected calculations for his proposal using the most recent scenario (40 states colluding against one state). Admitting that the TS had bungled the last set of calculations due to the complexity of his proposal, Garcia informed delegations that he now was aware that it would be necessary to reduce the proposal's complexity and that he is considering just how to do this.

¶18. (U) Delegations unanimously welcomed the decision to find a more comprehensible proposal. Canada, supported by China and Iran, noted that the TS would be inspecting sites, not states, and recommended focusing on the industry sites. Canada also urged Garcia to move ahead quickly to ensure delegations agree on a more equitable and efficient selection methodology as soon as possible. Russia, Brazil, India, Iran, and Mexico reiterated their strong opposition to inclusion of any political element, such as one state nominating any other states. Japan, supported by Norway, noted that any proposal will need to maintain elements to ensure unpredictability, and noted that it could accept geographic and political nominations from States Parties.

¶19. (U) Garcia, thinking out loud, described a possible way ahead. First, it would be a one-step selection process. Second, it would focus on plant sites, not states. Garcia, when asked, would not confirm that he would prepare a new paper. However, he did inform delegations that during the week of June 19, he planned to schedule two consultations on the methodology.

¶20. (U) After the consultation, Per Runn (Policy and Review Branch) pulled aside del rep to propose an alternative approach. The first step would focus on selection of the number of inspections in each state, using the  $0.5\sqrt{\text{number}} + 1$  algorithm for both the number of facilities and the A14 values. The second step would allow states to participate by submitting requests to the TS such as, "Put my points on facilities A, B, and C if Iran is selected, on facilities D, E, and F if Germany is selected,..." etc. That would allow states to increase the probabilities of selection of individual facilities, assuming that the draw included a mandate to inspect one (or two...) facilities in that country. While this is a very attractive proposal, del reps suspect that it would not meet the "non-political" criterion

of Brazil, Iran, India, Mexico, and Russia.

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INDUSTRY/SCHEDULE 3 TRANSFERS  
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¶21. (U) Discussion in this consultation centered on the latest facilitator's paper (dated March 22), which included Iran's comments from the previous meeting. Many delegations asked that much of what Iran requested be removed, and many other changes were suggested. Iran reminded delegations of their regional concerns and how the VIR continues to indicate that the majority of Schedule 3 transfers to States not Party are to one State in their region. Iran is also convinced that, upon review of the discussion from the drafting of VA Part VIII para 27, that the five years given to the Conference to consider "other measures" was meant to be a five-year grace period for these countries to come into the CWC, after which they should face a transfer ban. Thus, they see themselves as demonstrating significant flexibility in discussing something other than a ban at this time.

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INDUSTRY/LOW CONCENTRATION LIMITS FOR SCHEDULE 2A/2A\*  
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¶22. (U) Facilitator Steve Wade (U.K.) called a pre-meeting for several delegations (France, Germany, Japan, UK, and U.S.) to meet with him and Legal Advisor Onate regarding the legal interpretation of VA Part VII para 5. Despite the words of Onate, the result of this session seemed to solidify the positions of these delegations to the idea that the facilitator's proposal is outside the reading of this paragraph. In the consultation, Wade presented the details of his latest paper (dated 7 April 2006). Russia weighed in first with concern about the facilitator's paper in light of the language of VA Part VII para 5, which was joined by those from the earlier discussion. Canada stated that it felt that the "onus" was to demonstrate that industrial recovery of PFIB at a given concentration was "difficult" and that, in absence of such a demonstration, the facilitator's proposal was acceptable.

¶23. (U) Mohamed Daoudi (IVB) recalled that, during a similar discussion for Schedules 2B and 3, there was a general consensus that 30 percent addressed the concerns of "ease of recovery" across the board, regardless of total weight. Del questioned why the fact that the set of chemicals was much smaller meant that this same type of approach would not be considered sufficient. Italy still supports the facilitator's proposal; it also requested a written opinion from LAO on the language of VA Part VII para 5.

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CONFIDENTIALITY

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¶24. (U) Facilitator Betsy Sanders (U.S.) held a May 2 informal consultation on the situation regarding the classification of information. Iran continued to obstruct progress, but this time, India did not join support Iran's efforts. Although the substance of the discussion is agreed, the way ahead remains deadlocked. Iran insists that the decisions must be implemented via EC report language, in order to institute recommended changes right away. France, Germany, Japan, Ireland, and the TS supported finalizing the draft decision text, which would carry more weight and provide States Parties not involved in the negotiations the relevant background underlying the decisions.

¶25. (U) Ireland, supported by Germany, recommended that delegations support both approaches: report language to ensure that recommendations are implemented right away; decision language to record the will of the Executive Council to be endorsed by the Conference. The facilitator also

distributed draft EC report language, requesting the TS to distribute to National Authorities the Confidentiality Supplement to be included in the Declarations Handbook as an annex. The facilitator asked delegations to provide concerns and suggestions by May 10.

¶26. (U) Iran noted that the substance is delegations' request that the TS include presentations by OCS experts on classifying and handling documents segments in workshops, seminars, and annual meetings of National Authorities. In short, this amounts to EC meddling in internal TS management issues. Unless and until someone presents a satisfactory explanation for use of a decision instead of report language, Iran will not budge. Furthermore, the draft decision as it stands mixes elements. The preamble combines language from Review Conference, the OPCW Policy on Confidentiality, and informal information papers provided by the TS at the request of delegations (this argument swayed no one), arguing that this mix provided confusion, not clarity. Once again, the facilitator was unable to achieve consensus on a way forward.

¶27. (U) Javits sends.  
ARNALL